

**BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA  
DOCKET NO. 2019-390-E**

IN RE: Ganymede Solar, LLC, )  
 )  
 ) Petitioner, )  
 )  
 ) v. )  
 )  
 ) Dominion Energy South Carolina, )  
 ) Incorporated )  
 ) Respondent. )

**MOTION  
FOR CLARIFICATION OF  
DIRECTIVE ORDER NO. 2020-43**

**INTRODUCTION**

Ganymede Solar, LLC (“Project” or “Movant”) hereby moves the Public Service Commission of South Carolina (“Commission”), for clarification of this Commission’s Order No. 2020-43. Implicit in Order 2020-43 and every Commission Order, is the proposition that a party may not act in willful disregard of any such Order.

The Movant filed its Petition and a Motion to Maintain Status Quo with this Commission on December 20, 2019, and this Commission accepted jurisdiction of Movant’s filings and assigned the above-referenced Docket number. Additionally, on January 15, 2020, this Commission notified the parties that the Project’s Motion to Maintain Status Quo was under advisement until the scheduled Hearing in this matter.

Unfortunately, Respondent, Dominion Energy South Carolina, Incorporated (hereinafter as, “DESC” or “Respondent”), **has acted contrary to** (i) the Project’s timely filing of a Petition with this Commission (ii) the Project’s timely filing of a Motion to Maintain Status Quo (iii) this Commission’s acceptance of jurisdiction of this matter and (iv) this Commission’s broad supervisory authority under S.C. Code Section 58-27-980, (see, Exhibit “A” attached hereto, for elaboration of this Commission’s broad and supervisory authority to amend, modify, change or annul the Contract between the Project and DESC).

Evidence of Respondent’s disregard of this Commission’s authority and jurisdiction is DESC’s correspondence to the Project of December 30, 2019, stating that the Project was in default of its Interconnection Agreement and DESC’s correspondence to the Project of January 8, 2020, stating that the Project’s interconnection queue position was terminated. DESC’s correspondence purporting to both place the Project in default and to terminate the Project, **came after** this Commission assumed jurisdiction of this matter. Both correspondence are attached hereto as Exhibit “B” and Exhibit “C”.

The Project made an informational filing with this Commission on January 3, 2020, concerning Respondent’s blatant disregard of this Commission’s authority and jurisdiction, and that informational filing is attached hereto as, Exhibit “D”.

DESC attempted to gain an improper advantage by changing the status quo of this matter in December, purporting to terminate the Interconnection Agreement for the Project and purporting to remove the Project's queue position. Because this Commission's Directive Order No. 2020-43, did not explicitly state that the status quo between the parties must be maintained, the Respondent, DESC is effectively free to take further action prior to the hearing which could have the effect of either deciding this matter prematurely or creating practical impediments to the Commission's ability to grant the relief sought by the Project, leaving nothing for this Commission to decide. For example, DESC could conduct interconnection studies of later-queued projects assuming the Project will not achieve operation or construct any of the upgrades called for in its Interconnection Agreement, causing further controversy. Accordingly, the Project's Motion for Clarification follows.

### **MOTION FOR CLARIFICATION**

Incorporating the Introduction hereinabove, and Exhibits "A", "B", "C", and "D" hereto, Movant moves this Commission to clarify its Order No. 2020-43, issued on January 15, 2020, and to instruct Respondent, DESC to acknowledge the jurisdiction and authority of this Commission and to cease actions inconsistent with this Commission's authority and jurisdiction, and in particular any administrative or other actions predicated on the assumption that the Project will be withdrawn from DESC's Interconnection Queue. The grounds for this Motion are (i) the Project's timely filing of a Petition and Motion to Maintain Status Quo on December 20, 2019 (ii) this Commission's acceptance of jurisdiction of this matter and this Commission's assignment of Docket 2019-390-E, memorializing that acceptance of jurisdiction (iii) this Commission's broad supervisory authority under S.C. Code Section 58-27-980 and (iv) the clear evidence in Exhibits "B", and "C" hereto, that Respondent DESC has ignored the jurisdiction and authority of this Commission.

**CONCLUSION**

**WHEREFORE**, the Movant, based on the foregoing, including Exhibits “A”, “B”, “C”, and “D” hereto, and in light of Respondent DESC’s blatant disregard for this Commission’s authority and jurisdiction, this Commission should clarify its Directive Order No. 2020-43, and this Commission should instruct Respondent, DESC to rescind its improper actions purporting to terminate the Project’s Interconnection Agreement and purporting to remove the Project from its rightful queue position.

The above-referenced Movant respectfully requests that the relief sought in this Motion be granted; and

**FOR SUCH OTHER AND FURTHER RELIEF AS THIS COMMISSION  
MAY DEEM JUST AND PROPER.**

This 27<sup>th</sup> day of January, 2020

Respectfully Submitted,  
/s/Richard L. Whitt,

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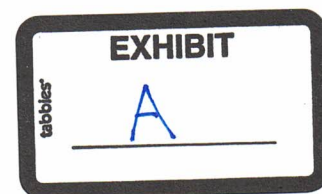
Richard L. Whitt,  
Richard@RLWhitt.Law  
**WHITT LAW FIRM, LLC**  
401 Western Lane, Suite E  
Irmo, South Carolina 29063  
(803) 995-7719

*As Counsel for Ganymede Solar, LLC.*



**SECTION 58-27-980.** Contracts subject to control and approval of Commission.

No contract charge to be made to any person, corporation or municipality by any electrical utility for electricity to be furnished for light, heat or power established subsequent to March 24, 1922, shall be exempt from alteration, control, regulation and establishment by the Commission, when in its judgment the public interest so requires, to the full extent of the powers in relation to charges conferred upon the Commission by this chapter. Nor shall any contract establishing a rate or rates or any other contract affecting the use or disposition of its product or the charges to be paid therefor be entered into by any electrical utility without prior approval by the Commission, nor unless it be subject to amendment, modification, change or annulment by the Commission, if the public interest so requires. But nothing herein contained shall be construed to require the Commission's approval of a contract fixing a rate already approved by the Commission and then effective, if such contract rate is fixed subject to subsequent amendment, modification, change or annulment by the Commission. Full power and authority is hereby conferred on the Commission to accomplish the purposes expressed in this section.





Matt Hammond  
220 Operation Way  
Cayce, SC 29033  
(803) 217-2175  
[mhammond@scana.com](mailto:mhammond@scana.com)

December 30, 2019

Ganymede Solar, LLC  
Attn: Asset Management  
3250 Ocean Park Blvd.  
Suite 355  
Santa Monica, CA 90405

Re: **Notice of Default - Interconnection Agreement**

Dear Sir/Madam:

Ganymede Solar, LLC ("Ganymede") and Dominion Energy South Carolina, Inc. (formerly South Carolina Electric & Gas Company) ("DESC") entered into an Interconnection Agreement on May 7, 2018, which the parties amended on June 15, 2018 (as amended, the "IA"). A copy of the IA is provided as Attachment A to this letter.

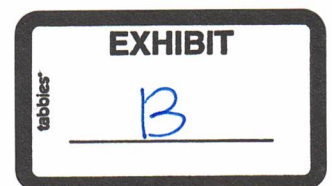
In Appendix 4 to the IA, Ganymede agreed to complete certain Milestones (as defined in the IA). Each Milestone details critical construction and payment milestones of the parties. These Milestones include a payment of \$2,340,100.00 ("Milestone Payment 2"), which was due and payable under the terms of the IA on or before December 27, 2019. This deadline for Milestone Payment 2 has now passed, and Ganymede failed to make Milestone Payment 2 as required by the IA. As a result, Ganymede is in default under the IA.

Therefore, DESC hereby provides written notice to Ganymede of its default under the IA arising from its failure to submit Milestone Payment 2 in accordance with the terms therein. As such, DESC plans to terminate the IA pursuant to Section 7.6.2 if DESC does not receive \$2,340,100.00 on or before January 7, 2020.

Please note that DESC reserves all rights it may have in law, in equity, or under the IA related to the matters contained herein.

Regards,

Matt Hammond





Matt Hammond  
220 Operation Way  
Cayce, SC 29033  
(803) 217-2175  
[mhammond@scana.com](mailto:mhammond@scana.com)

January 8, 2020

Ganymede Solar, LLC  
Attn: Asset Management  
3250 Ocean Park Blvd.  
Suite 355  
Santa Monica, CA 90405

Re: **Termination of Interconnection Agreement**

Dear Sir/Madam:

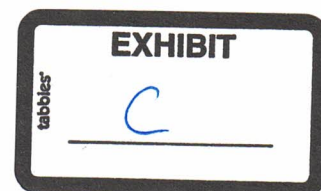
Ganymede Solar, LLC (“Ganymede”) and Dominion Energy South Carolina, Inc. (formerly South Carolina Electric & Gas Company) (“DESC”) entered into an Interconnection Agreement on May 7, 2018, which the parties amended on June 15, 2018 (as amended, the “IA”). A copy of the IA is provided as Attachment A to this letter.

In Appendix 4 to the IA, Ganymede agreed to submit \$2,340,100.00 (“Milestone Payment 2”) to DESC on or before December 27, 2019. However, Ganymede failed to make Milestone Payment 2 and defaulted under the IA. On December 30, 2019, DESC notified Ganymede of such default in writing pursuant to Article 7.6.1 of the IA (the “Default Notice”). A copy of the Default Notice is provided as Attachment B to this letter.

As explained in the Default Notice, Article 7.6.1 of the IA afforded Ganymede a period of five (5) business days from receipt of the Default Notice—January 7, 2020—to submit Milestone Payment 2 and avoid possible termination of the IA. To date, Ganymede has not submitted Milestone Payment 2 and remains in default under the IA. Therefore, be advised that DESC hereby terminates the IA pursuant to Article 7.6.2 because Ganymede failed to submit Milestone Payment 2 in accordance with the IA.

Regards,

Matt Hammond



**BEFORE  
THE PUBLIC SERVICE COMMISSION  
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DOCKET NO. 2019-390-E**

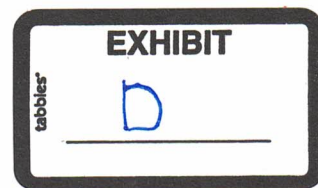
IN RE: Ganymede Solar, LLC,	)	
	)	
Petitioner,	)	<b>INFORMATIONAL FILING</b>
	)	
Dominion Energy South Carolina,	)	
Incorporated,	)	
Respondent.	)	

**INTRODUCTION**

Ganymede Solar, LLC (hereinafter as, the “Project” or “Ganymede”), currently has a Petition and a Motion to Maintain Status Quo pending in this Docket. Dominion Energy South Carolina, Incorporated (hereinafter as, “DESC”), has ignored those two filings and the jurisdiction of this Commission and purported to place the Ganymede Project in default. Ganymede’s Informational Filing follows.

**UNCONTROVERTED FACTS**

1. DESC is subject to the jurisdiction of this Commission.
2. A Petition was filed with this Commission on **December 20, 2019**, asking this Commission to assume jurisdiction of the Ganymede matter and to exercise its statutory authority to amend certain terms of the Interconnection Agreement (“IA”) between Ganymede and DESC.
3. Under the existing IA between Ganymede and DESC, the Project’s Milestone 2 (“M2”) payment was due on December 27, 2019. The relief sought in the Petition included adjustment of this deadline, because of the Project’s inability to obtain financing to make the M2 payment by that date.
4. A Motion to Maintain Status Quo was also filed with this Commission on **December 20, 2019**, asking the Commission to maintain the status quo between DESC and the Project. Ganymede’s Petition was filed pursuant to S.C. Code Ann. Section 58-27-980, which gives the Commission broad supervisory authority, granted by





the South Carolina General Assembly and described as being, “Full Power and Authority”. Also, Section 12.1<sup>1</sup> of the Interconnection Agreement, to which Ganymede and DESC are signatories, acknowledged that Ganymede could seek the relief sought in Ganymede’s Petition. Specifically, S.C. Code Ann., Section 58-27-980 states that, “No contract... shall be exempt from alteration, control, regulation and establishment by the Commission, when in its judgment the public interest so requires...” and “...unless [a Contract, in this case, the Company’s Interconnection Agreement] be subject to **amendment**, modification, change or annulment by the Commission....” (Emphasis supplied).

5. Both the Petition and the Motion described hereinabove, were filed prior to the M2 payment due date for Ganymede of December 27, 2019.

6. This Commission accepted Ganymede’s Petition and Motion on **December 23, 2019** and assumed jurisdiction by assigning Docket 2019-390-E, to Ganymede’s filing.

### **DESC’S IMPROPER ACTION**

Despite the uncontroverted facts set forth hereinabove, DESC sent correspondence to Ganymede on December 30, 2019, purporting to place the Project in default, effective January 7, 2020. The only way DESC’s correspondence purporting to place the Project in default would be appropriate, is (i) if DESC ignored the uncontroverted facts as set forth above (ii) if DESC could invade the province of this Commission and (iii) if DESC ignored the uncontroverted jurisdiction of this Commission in this matter. Because it is uncontroverted that DESC is subject to the jurisdiction of this Commission, and the above filings were timely made, DESC is without authority to institute a unilateral claim of default before this matter is heard and decided by this Commission.

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<sup>1</sup> “The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the law of the State of South Carolina....”



DESC's attempt to ignore Ganymede's timely filings and the broad supervisory authority of this Commission under S.C. Code Ann., Section 58-27-980, if successful, would mean that DESC is allowed to disregard this Commission's broad authority and jurisdiction. It would be meaningless for this Commission to have broad supervisory powers, if a utility can simply ignore this Commission's authority and this Commission's ability to amend, modify, change or annul the Contract between Ganymede and DESC. Simply put, this Commission's broad supervisory power would be a nullity, if DESC's flagrant disregard for this Commission's jurisdiction is allowed to stand. It is nonsensical for this Commission to have the authority to supervise, amend, modify, change or annul the IA, if the Commission cannot stay this matter to allow for this Commission's review and resultant action.

DESC's purported attempt to declare the Project in default, and to remove the Project from its rightful queue position, would leave nothing of substance for this Commission to decide.

### CONCLUSION

In summary, (i) DESC is subject to the jurisdiction of this Commission; (ii) a timely Petition and Motion were filed with this Commission and both are still pending for a decision from this Commission; (iii) this Commission has full power and authority to amend, modify, change or annul the Contract between Ganymede and DESC and to maintain the status quo between these parties until this matter is finally decided and; (iv) Ganymede sought this Commission's jurisdiction in this matter and this Commission accepted jurisdiction on **December 23, 2019**. Despite the uncontroverted facts set forth hereinabove, including Ganymede's timely filing and this Commission's assumption of this Commission's broad jurisdiction granted to this Commission by the South Carolina General Assembly, DESC takes the remarkable position that DESC can ignore Ganymede's filings and this Commission's broad jurisdiction and one week after this matter was placed under the jurisdiction of this Commission, declare Ganymede in default on December 30, 2019, effective January 7, 2020.

[Signature Page Follows]

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Respectfully Submitted,  
/s/Richard L. Whitt,

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(803) 995-7719

*As Counsel for Ganymede Solar, LLC.*

January 3, 2020  
Irmo, South Carolina